shall hinder or obstruct any agent or employee of the Department of Liquor Control, or any officer of the law, from making inspection or search of any place, other than a bona fide private residence, where intoxicating liquor is possessed, kept, sold, or given away."

"Section 4301.99(E). Penalties of the Revised Code of Ohio. Whoever violates . . . Section 4301.66 . . . of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not less than ten days nor more than six months, or both . . ."

STATEMENT OF THE CASE.

This case was commenced by the Department of Liquor Control of the State of Ohio by filing and preferring a charge against Petitioner, Michele H. Bates, dba Fratelli's Restaurant, the permit holder, and such reads as follows:

"On July 8, 1962, you, Michele H. Bates, did hinder and obstruct inspectors of the Department of Liquor Control from making an inspection of your permit premises while in the lawful performance of their duties — in violation of the regulations of the Board of Liquor Control."

The charge, as preferred by the Department of Liquor Control, State of Ohio, against the Petitioner, Michele H. Bates, dba Fratelli's Restaurant, was made before the Board of Liquor Control of the State of Ohio, and a hearing was had on November 8, 1962, before said Board of Liquor Control. The testimony showed that Harold Steele and John Kestel, State Liquor Agents, attempted to search the permit premises of the Petitioner's without first having obtained a search and seizure warrant from a Court of competent jurisdiction.

The Board of Liquor Control of the State of Ohio found that the Petitioner did impede the search of her permit premises by agents of the Board of Liquor Control, and the order of said Board, among other things, suspended the Petitioner's Classes D-1 and D-2 permits for a period of fifty-six (56) days, even though the Petitioner demanded that the Liquor Agents show her a search warrant to search her premises.

On October 17, 1963, a Journal Entry approved by the Court was filed with the Common Pleas Court of Franklin County, Ohio. By virtue of that entry, the Court in considering an appeal by the Petitioner from the Board of Liquor Control found and determined that the order of the Board of Liquor Control was supported by reliable, probative and substantial evidence and was in accordance with law. This Journal Entry also ordered the dismissal of the appeal.

On November 5, 1963, Counsel for the Petitioner filed a Notice of Appeal to the Court of Appeals of Franklin County, Ohio, from the final order of the Court below. No praecipe was filed asking for preparation of the transcript of Docket and Journal Entries, and original papers and the filing of the same with the Court of Appeals of Franklin County, Ohio, at this time.

On July 10, 1964, Counsel for Respondents, Liquor Control Commission of Ohio, successor to the Board of Liquor Control, filed an application with the Court of Appeals of Franklin County, Ohio, "for an order docketing the within cause and assigning it a number in this Court."

The application to docket the cause was approved by a Judge of the Court of Appeals of Franklin County, Ohio, and the cause was ordered docketed and assigned case number 7770; the Journal Entry being dated July 10, 1964.

On July 13, 1964, Counsel for the Respondent, Liquor Control Commission of Ohio, filed a Motion to dismiss the appeal for failure to prosecute it.

On August 13, 1964, Counsel for Petitioner filed a motion asking for "leave to file herein her assign-

ments of error and brief, and that a date for the filing of such documents be set."

By Journal Entry dated December 3, 1964, the Court of Appeals of Franklin County, Ohio, sustained the Motion of Respondent, and overruled Petitioner's Motion, and thereby dismissed Petitioner's Appeal to the Court of Appeals of Franklin County, Ohio.

On December 23, 1964, Petitioner filed her Notice of Appeals in the Court of Appeals of Franklin County, Ohio, of her intentions to appeal the final order of the Court of Appeals of Franklin County, Ohio, to the Supreme Court of the State of Ohio.

On January 12, 1965, Petitioner filed her Brief and Motion to Certify the Records of the Court of Appeals of Franklin County, Ohio, and her appeal, as a matter of right, to the Supreme Court of the State of Ohio. On March 3, 1965, this Motion was over-ruled and the appeal dismissed.

Petitioner contends that the act of the liquor agents of the Respondent in forcible searching her permit premises without a search warrant, when demanded by Petitioner, was a violation of her Constitutional rights and the refusal of the Court of Appeals to allow her to file her assignments of error and brief was a violation of discretion.

REASONS FOR GRANTING THE WRIT.

The Fourth Aemndment to the Constitution of the United States provides the right of the people to be secured in their persons and property, and that the Fourth Amendment to the United States Constitution extends to the State Court. Mapp vs. Ohio, 81 S.Ct. 1684 (1961). Boyd vs. United States, 116 U.S. 616 (1886) and this prohibition extends to the State Courts as well as the United States Court, Mapp vs. Ohio, supra.

The Fourth Amendement to the United States Constitution, forbidding the federal government to convict a man of crime by using testimony or papers obtained from him by unreasonable searches and seizures, is enforceable against the States through the Fourteenth Amendment to the United States Constitution. Ker vs. California, 83 S.Ct. 1623 (1963), 374 U.S. 23. The Ker case, supra, reaffirmed the Mapp case which the Supreme Court of the United States held as the controlling law in search and seizure cases.

The rule excluding illegally seized evidence is of Constitutional origin. Mapp vs. State, supra. All evidence obtained by searches and seizures in violation of the Constitution is constitutionally inadmissible in a State Court. Mapp vs. State, supra. The Fourth Amendment to the Constitution of the United States' right of privacy is enforceable against the States through the due process clause of the Fourteenth Amendment to the Constitution of the United States. Mapp. vs. State, supra.

The prohibitions of the Fourteenth Amendment to the Constitution of the United States extends to all actions of the State denying equal protection of the laws; whatever the agency of the State taking the

action. Brown vs. Board of Education. 74 S.Ct. 686 (1954), and Cooper vs. Aaron,78 S.Ct. 1401 (1958).

The Federal Judiciary is supreme in the exposition of the Federal Constitution and the interpretation of the Fourteenth Amendment to the United States Constitution enunciated by the Supreme Court of the United States is the supreme law of the land, and Article VI of the Constitution makes it of binding effect on the States, anything in the Constitution or laws of any State to the contrary notwithstanding. Cooper vs. Aaron, supra.

It is the contention of the Petitioner that the prohibition contained in the foregoing cases strictly prohibit the State of Ohio from passing any law or statute, or any agency or board of the State of Ohio, from passing any rule or regulation that would abridge any right granted to all the citizens and inhabitants of the State of Ohio. Petitioner contends that by the legislature of the State of Ohio enacting Section 4301.66 of the Revised Code of Ohio, it placed an undue burden upon certain classes of people as to diver, and other classes of people in the State of Ohio, by permitting liquor agents and/or police officers to search any place, other than a bona fide residence, where intoxicating liquor is possessed, kept, sold or given away. What the legislature is attempting to do and what Respondents are attempting to do by the use of its rules and regulations, is to make the search for alleged violations of the liquor laws of Ohio different from other crimes in Ohio.

It seems entirely clear, therefore, that the Supreme Court of the United States made the requirements of the Fourth Amendment to the Constitution so that all agencies of the States as well as the Federal Government first obtain a search and seizure

warrant before any place could be searched for an alleged violation of the liquor laws or any law of the State or Federal Government.

This question should be resolved by the United States Supreme Court, as it is a case of first impression; that many thousands of permit holders in the State of Ohio are entitled to know what their legal rights are under Section 4301.66 of the Revised Code of Ohio, as to searching their premises where intoxicating liquor is possessed, kept, sold or given away, and whether or not they can demand that the liquor agents and/or police officers not search their places without first obtaining a search and seizure warrant in light of the Fourth Amendment to the Constitution of the United States; and further they need not be a witness against themselves by standing aside under provisions of Section 4301.66 of the Revised Code of Ohio in light of the provisions of the Fifth Amendment to the Constitution of the United States. There is no controversy as to the fact that the liquor agents did not obtain a search and seizure warrant, nor did Petitioner waive her rights by granting permission for such search without such warrant.

CONCLUSION.

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Alvin J. Savinell,
Counsel for Petitioner

Of Counsel:

Alvin J. Savinell
City Annex Building
Steubenville, Ohio
Phone: Atlantic 2-6279

APPENDIX A.

Case No. 215738 - Filed Oct. 17, 1963

In The

Court of Common Pleas, Franklin County, Ohio

MICHELE H. BATES

dba Fratelli's Restaurant

Appellant

vs.

BOARD OF LIQUOR CONTROL

State of Ohio

Appellee

JOURNAL ENTRY

This cause came on for consideration from an order of the Board of Liquor Control suspending the appellant's D-1 and D-2 permits for fifty-six (56) days. The cause was submitted to the Court upon the transcript of proceedings taken before the Board of Liquor Control and a motion of the appellee to dismiss for failure to comply with Rule XXI-A of this Court.

In consideration thereof, the Court finds that the transcript of the record was filed on December 18, 1962, and since that time no brief has been filed as required by Para. 2 of Rule XXI-A which reads as follows:

> "Briefs for the appellant shall be filed within twenty (20) days after the filing of the transcript of the record. Briefs for the appellee shall be filed within ten (10) days after the filing of the brief of the appellant. The reply brief shall be filed within five (5) days after the filing of appellee's brief."

The Court further finds that the order of the Board of Liquor Control is supported by reliable, probative and substantial evidence and is in accordance with law.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the herein appeal should be, and the same hereby is, dismissed.

KENNETH L. SATER, Judge

APPROVED:

WILLIAM B. SAXBE
Attorney General

DUANE F. LANTZ
Assistant Attorney General

ATTORNEYS FOR APPELLEES

CARLES T. KAPS
Attorney For Appellant

APPENDIX A.

In The

Court of Appeals of Franklin County, Ohio

Michele H. Bates
dba Fratelli's Restaurant
Rear 949½ Humes, Alley
Steubenville, Ohio
Appellant-Appellant,

v.

October Term, 1965
Board of Liquor Control
of the State of Ohio,
and
Department of Liquor Control
of the State of Ohio,
Appellee-Appellee.

OPINION

Rendered on September 22, 1964 - No. 7770

CLAYMAN, SIGALL, JAFFY & TAYLOR,
MR. DAVID CLAYMAN, of Counsel,
42 East Gay Street,
Columbus, Ohio,
For Appellant-Appellant.

MR. WILLIAM B. SAXBE, Attorney General,
MR. JAMES E. RATTAN, Assistant,
State House Annex,
Columbus, Ohio,
For Appellee-Appellee.

BRYANT, J.

On October 17, 1963, a journal entry approved by the court was filed with the Common Pleas Court of Franklin County, Ohio. By virtue of that entry, the court in considering an appeal by Michele H. Bates, dba Fratelli's Restaurant, appellant herein, from the Board of Liquor Control, appellee herein, found and determined that the order of the said board, which among other things suspended for 56 days the Classes D-1 and D-2 permits held by Bates, was supported by reliable, probative and substantial evidence and was in accordance with law. This journal entry also ordered the dismissal of the appeal.

On November 5, 1963, counsel for Bates filed a notice of appeal to this court from the final order of the court below. However, it appears that no praecipe was filed asking for the preparation of the thans-

cript of docket and journal entries and original papers and the filing of the same with this court, nor does it appear that any other steps were taken other than the mere filing of the notice of appeal on questions of law.

On July 10, 1964, counsel for the Liquor Control Commission of Ohio, successor to the Board of Liquor Control, as appellee, filed an application with this court "for an order docketing the within cause and assigning it a number in this court." The memorandum of counsel for appellee refers to the filing of the notice of appeal on November 5, 1963, by appellant and also to the failure of appellant to file a praecipe to bring up the transcript of docket and journal entries. It concludes with the following statement:

> "Applicant, therefore, requests an order docketing the cause and assigning it a number in this court **so that appellee may proceed to have said appeal dismissed for failure to prosecute.**"

This motion was filed pursuant to the provisions of Rule I (1) (a) Rules of Practice of the Courts of Appeals of Ohio, which reads as follows:

> "Within ten (10) days after filing a notice of appeal or the order allowing an appeal or a certified copy thereof, where permission to institute the appeal is required, the Clerk of the Court from which the appeal is taken or a Judge thereof shall, upon being paid the lawful fees and the filing of a praecipe therefor, prepare and file in the Court of Appeals a transcript of docket and journal entries, with such original papers or transcripts as are necessary to exhibit the errors complained of. If the transcript and papers are not filed within said time either party may apply to the

Court of Appeals to have the case docketed and for an order directed to the filing thereof. See Section 2505.08, Revised Code."

The application to docket the cause was approved by a judge of this court and the case was ordered docketed and assigned case number 7770, the journal entry being dated July 10, 1964.

On July 13, 1964, counsel for appellee filed a motion to dismiss the appeal for failure to prosecute it, this motion reading as follows:

"Comes now the Liquor Control Commission, successor to the Board of Liquor Control as appellee herein, and moves the court for an order dismissing the appeal for the reason that the appellant has failed to file assignments of error or brief within the time provided by the court rules."

Attached to the motion just quoted above and the memorandums in support thereof is a certificate of service indicating that counsel for appellee served a copy of the motion and memorandum upon appellant, it being mailed on July 13, 1964.

Although Rule III (1) of the Rules of the Courts of Appeals required an answer brief within ten days after the filing of this motion and brief, no such answer brief was filed although approximately two months have elapsed since this motion to dismiss was filed.

On August 13, 1964, counsel for appellant filed a motion asking for "leave to file herein her assignments of error and brief and that a date for the filing of such documents be set." In the memorandum in

support of appellant's motion, it is admitted that the contentions of opposing counsel as to the failure to file papers necessary to prosecute the appeal are true. The only reason in support of this request is that there has been a change of attorneys at law.

Under the circumstances in this case, we do not regard this as a sufficient reason. A letter in the file in this case indicates that the former counsel did not withdraw until May 11, 1964, at which time appellant already was many months in default. The employment of new counsel at this late date can hardly be said to be sufficient to reinstate an appeal already long since in default.

Furthermore, it will be observed that appellant even as of this date cannot be said to have perfected an appeal. On the contrary, the only steps taken to bring the matter before this court were taken by the appellee for the sole and express purpose of bringing this matter before this court to dismiss and terminate the entire appeal.

For the reasons above set forth, in our opinion, the motion of July 13, 1964, by appellee for an order dismissing the appeal filed on behalf of the Liquor Control Commission of Ohio must be sustained and the motion filed on August 13, 1964, on behalf of appellant for leave to file her assignments of error and brief must be overruled.

DUFFY, P. J., and TROOP, J., concur.

Case No. 7770

In The
Court of Appeals of Franklin County, Ohio

Michele H. Bates,
dba Fratelli's Restaurant,
Appellant,

v.

Board of Liquor Control,

and

Department of Liquor Control,
of the State of Ohio,
Appellee.

JOURNAL ENTRY

This cause came on to be considered upon motion of the Liquor Control Commission as statutory successor to appellee, Board of Liquor Control, for an order dismissing the appeal for the reason that appellant had failed to file assignments of error and brief within the time provided by the rules of this court and upon motion of appellant thereafter filed for leave to file assignments of error and brief; and the court, being fully advised in the premises, finds said motion of the Liquor Control Commission is well taken and must be sustained and said motion of appellant is not well taken and must be overruled.

It is, therefore, ORDERED that the appeal herein be, and the same hereby is, dismissed.

Costs taxed to appellant.

Exceptions to appellant.

BRYANT, J., Judge
DUFFY, P. J., Judge
TROOP, J., Judge

APPROVED:
DAVID CLAYMAN
ATTORNEY FOR APPELLANT

WILLIAM B. SAXBE
Attorney General

JAMES E. RATTAN
Assistant Attorney General

ATTORNEYS FOR APPELLEE

The Supreme Court of the State of Ohio

The State of Ohio,
City of Columbus.

1965 Term

To wit: Wednesday, March 3, 1965

No. 39268

Appeal From The Court of Appeals
for Franklin County

Michele H. Bates dba etc.,
Appellant,

vs.

Board of Liquor Control, et al.,
Appellees.

This cause, here on appeal as of right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant costs herein expended; that a mandate be sent to the Court of Common Pleas to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

APPENDIX A.

The Supreme Court of the State of Ohio

The State of Ohio,
City of Columbus.
1965 Term
To wit: Wednesday, March 3, 1965
No. 39268

Motion For An Order Directing
The Court of Appeals
for Franklin County
To Certify Its Record

Michele H. Bates dba etc., Appellant,

vs.

Board of Liquor Control et al., Appellees.

It is ordered by the Court that this motion is overruled.